

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.330 OF 1999

Shri Agnelo Alexinho
Lobo, Indian inhabitant,
residing at House
No.67/5, Vaddem, Socorro,
P.O. Porvorim,
Bardez, Goa.

...PETITIONER

Versus

1. The Director of
Panchayats, Panaji,
Goa;
2. The Government of
Goa, through the
Chief Secretary,
having his office at
Secretariat, Panaji,
Goa;
3. Shri Soter Francisco
D'Souza, Member of
Village Panchayat of
Socorro. Socorro,
Bardez, Goa

...RESPONDENTS

Shri V.B. Nadkarni, Senior Advocate, with Shri H.D.
Naik, Advocate for the Petitioner.

Shri S.G. Dessai, Senior Advocate, with Shri A.
Bras De Sa, Advocate, for the Respondents No.1 and 2.

Shri V.P. Thali, Advocate for the Respondent No.3.

CORAM : F.I. REBELLO &
A.S. AGUIAR, JJ.

DATED : JANUARY 9, 2002.

ORAL JUDGMENT (PER F.I. REBELLO, J.)

Petitioner was duly elected as a Member
of the Socorro Village Panchayat in the elections
held on 12-1-1997 and, thereafter, on 14-2-1997 was
elected as Sarpanch. Earlier also, the Petitioner

had held the post of Sarpanch. On 7-9-1998, Respondent No.1 served on the Petitioner a Show Cause Notice under Section 50(4) and 50(5) of the Goa Panchayat Raj Act, 1994 (hereinafter referred to as 'the Panchayat Raj Act'). On 16-12-1998, the Petitioner filed his reply to the Show Cause Notice contesting the charges and allegations made therein. The matter proceeded before the 1st Respondent. On 16-2-1999, after hearing parties the 1st Respondent directed the Petitioner and the complainant/Respondent No.3 herein to file Written Arguments on 3-3-1999. On 3-3-1999, the complainant/Respondent No.3 filed Written Arguments. On that date, on behalf of the Petitioner an application was filed seeking time to file Written Arguments. Time was granted and the matter was adjourned to 7-4-1999 for judgment and order.

After the matter was reserved for judgment, the Petitioner filed three applications. The first application was dated 15-3-1999. By the said application, the Petitioner sought an opportunity to cross-examine the Respondent No. 3 through his lawyer and also to permit the Petitioner to lead evidence through witnesses. The second application by the Petitioner contained a prayer that the

Respondent No.1 should reclude himself from the matter as the Petitioner apprehended reasonable likelihood or possibility of bias. The third application dated 17-3-1999 was that the matter should be adjourned till such time as the two afore mentioned applications were heard and disposed of. By Order dated 4th May 1999, the 1st Respondent disposed of all the applications and rejected the reliefs prayed for. While considering the case of the Petitioner for cross-examination of the Respondent, the 1st Respondent held that the Orders under Sub-sections (4) and (5) of Section 50 would be passed, based on the documentary evidence and after considering the reply and written submissions and in these circumstances there was no need for cross-examination of the Respondent No.3. Insofar as the application that the Respondent No.1 should reclude himself, the 1st Respondent held that the Petitioner had not disclosed any material which must necessitate the Respondent No.1 reclusing himself. The 1st Respondent noted the various steps in the proceedings and the fact that it was only after time was fixed for filing written arguments that the application was moved. In these circumstances, the said application was also rejected.

2. The 1st Respondent thereafter proceeded with the proceedings and by Order dated 14th June, 1999 directed the removal of the Petitioner from the Office of Sarpanch as well as the Membership of the Village Panchayat of Socorro from the date of receipt of the Order with the directions that the Petitioner would not be eligible for re-election as Sarpanch or as a Member of the Panchayat for a period of five years from the date of issue of the Order. Aggrieved by the said Order, the Petitioner has preferred the present Petition.

On 29th October, 1999, this Court was pleased to issue Rule. On January 14, 2000 the Court held that the Petitioner should be allowed to continue as a Member of the Village Panchayat till the final decision in the Petition. However, considering the various allegations against the Petitioner which are referred to in the impugned Order and the proceedings therein, his rights as a Member of the Panchayat were restricted to the extent that the Petitioner during the pendency of the Petition was not allowed to represent the Panchayat in any proceedings or to issue any letter or certificate on behalf of the Panchayat or to vote at any of

the meetings of the Panchayat till further orders. The impugned Order of Respondent No.1 to that extent was stayed. An appeal came to be preferred against the said Order. The same came to be dismissed by Order of this Court dated 13th June, 2000.

3. At the outset it may not be necessary to go into the contents of the Show Cause Notice, the reply thereto and the findings recorded by the 1st Respondent. This is because the challenge to the action of the 1st Respondent is mainly based on violation of the provisions of sub-section (4) and sub-section (5) of Section 50 of the Panchayat Raj Act and the principles of natural justice. The principal grounds of challenge as raised by the Petitioner are that the Show Cause Notice clearly disclosed that the Director of Panchayat had foreclosed his mind even before hearing the Petitioner. Though opportunity to show cause has been given, the 1st Respondent has pre-decided the issue by holding in the show cause notice itself that the alleged acts of irregularities/illegalities had been proved and, as such, the purported opportunity given was sham and, consequently, the Order dated 14th June, 1999 was illegal, null and

void. The next submission is that a perusal of the Show Cause Notice would indicate that the opportunity given to the Petitioner was only to show cause why he should not be removed from the Office of the Sarpanch as well as from the membership of the Village Panchayat. No opportunity at all, reasonable or otherwise, was given to the Petitioner to show the acts of irregularities/illegalities as alleged against him, should not be held as proved. The next submission is that the Show Cause Notice purported to give opportunity to the Petitioner to show cause why he should not be removed from the Office of Sarpanch as well as from membership of the Village Panchayat. It is submitted that no opportunity was given to the Petitioner particularly or at any stage as to why he is to be debarred and/or made ineligible for election as Sarpanch or as a Member of the Village Panchayat of Socorro for a period of five years. It is also submitted that the impugned Order proceeds on the basis that the charges against the Petitioner are based on the information furnished by the Petitioner during the inspection carried out by the Director of Village Panchayat at random of the records of the Village Panchayat. Neither the inspection report, if any, nor statements of the inspection have been disclosed

to the Petitioner at any stage nor referred to in the Show Cause Notice, although they appear to be relied upon in passing of the impugned Order in breach of the principles of natural justice and as such the impugned Order is illegal, null and void.

4. For the purpose of appreciating the contentions as raised on behalf of the Petitioner, it will be necessary to reproduce the provisions of sub-sections (4) and (5) of Section 50 of the Panchayat Raj Act. They are as under:-

(4) Every Sarpanch or Deputy Sarpanch of a Panchayat shall after an opportunity is afforded for hearing him, be removable from his office as Sarpanch or Deputy Sarpanch by the Director for being persistently remiss in the discharge of his duties or misconducting himself or misuses or abuses the powers or exercising the powers not expressly vested in him by or under the Act or the rules framed thereunder and the Sarpanch or Deputy Sarpanch so removed who does not cease

to be a member under sub-section (2) shall not be eligible for re-election as Sarpanch or Deputy Sarpanch for such period not exceeding five years as the Director may specify in his order.

(5) A Sarpanch or Deputy Sarpanch removed from his office under sub-section (4) may also be removed by the Director from the membership of the Panchayat for such period not exceeding five years as the Director may specify in his Order."

5. At the hearing of the Petition on behalf of the Petitioner though there was a challenge to the validity of the Section that has not been pressed and only the order is challenged. It is contended that the impugned Order is liable to be set aside for the following reasons:

(A) In addition to removal as Sarpanch on the grounds stipulated in Section 50(4) of the Act, a person so removed is also liable to incur disqualification of being ineligible to be

re-elected as such for a period not exceeding five years as ordered by the Director of Panchayat at his discretion. Further, such person is also liable to be removed as a Member of the Panchayat also with a liability of being disqualified or being ineligible to be re-elected as a Member for a period not exceeding five years as ordered by the Director in his discretion. Section 50(4) does not either expressly or by necessary implication exclude the application of principles of natural justice which have to be read as an integral part of the said Section.

(B) The expression "opportunity" before being removed and made ineligible for re-election is not restricted only to defend the allegation on merits, but also to show cause against the penalties proposed to be imposed;

(C) Opportunity must mean reasonable opportunity and this opportunity must be meaningful and effective. The person likely to be adversely affected has to be informed not only of the ground on which the action is proposed to be taken together with the material relied upon, but also necessarily be informed precisely and specifically

of the nature of penalty to be imposed. This reasonable opportunity would include the opportunity to defend the allegation by cross-examining the complainant, if any, and witnesses, if any, whose statements are relied upon in support of the allegations as also to lead both documentary and oral evidence by examining himself on material and relevant witnesses to refute the allegations;

(D) At the stage of issue of Show Cause Notice, the Authority has to form only a tentative or prima facie opinion based on the material that the person in respect of whom the show cause notice is issued has been persistently remiss in the discharge of his duties or misconducted himself or misused or abused the powers or exercised powers not expressly vested in him by Rules framed thereunder. The Authority cannot foreclose its mind at that stage before considering the reply filed by the petitioner. In the instant case, the Show Cause Notice would indicate that the Respondent No.1 had already come to the conclusion and, consequently the opportunity offered was sham;

(E) The Director of Panchayats exercising powers under Section 50(4) and 50(5) and Section 210 of

the Panchayat Raj Act, acts as a quasi-judicial authority and that being the case, he ought not to be a Judge in his own cause. In the instant case, the Respondent No.1 has relied on material gathered at the inspection conducted by himself. This by itself indicates that Respondent No.1 was biased. Considering the definition of "Director" in Section 2 of the Act, the doctrine of necessity also is not attracted. Inasmuch as the Respondent NO.1 did not recuse himself the Order is liable to be quashed and set aside.

(F) The Respondent No.1 when discharges functions under Section 50(4) and 50(5) and Section 210-A of the Act has to act as quasi-judicial authority and the order passed must disclose reasons, more so in the absence of any remedy of appeal or revision. Apart from disclosing the reasons in respect of the first part of sub-section (4) and (5) of Section 50 as to whether the petitioner is guilty, reasons have also to be given in support of the order disqualifying a party for a period upto five years;

(G) The Show Cause Notice which has to be read into sub-section (4) and (5) of Section 50, apart from calling on the person to whom the notice is issued

to show cause in the matter of removal, must also call on the party to show cause as to why the maximum period of disqualification or ineligibility for election should not be imposed. In the instant case, this has not been done and, consequently, the order is liable to be quashed and set aside;

On the other hand, on behalf of the Respondents it is contended that the Petitioner has been given sufficient opportunity. That it is not a requirement of this opportunity considering the Section that the Petitioner should be allowed to cross-examine the witnesses and/or to lead oral evidence. It is next contended that sub-section itself provided for an opportunity. The question therefore of reading the principles of natural justice need not be gone into. It is the case of the Respondent No.1 that sub-section (4) and (5) themselves contemplate the maximum period for which a person can be disqualified or made ineligible for election which period can even go beyond the period of the term for which he was elected and that being the case, such a person knows the period for which he can be removed and, in these circumstances, it is not a requirement that a party must also be given an opportunity of showing cause in the Show

Cause Notice itself as to why he should not be removed for a period of five years. It is further clear from the said Show Cause Notice itself that it is not a decision and further does not foreclose or renders redundant the opportunity given to the Petitioner. The Show Cause Notice is based on the materials on which the Respondent No.1 has come to prima facie conclusion and which have been dissolved to the petitioner. It is then contended that once reasons have been given for removal, no separate reasons are required to be given in so far as the period of disqualification or re-election as Sarpanch or a Member is concerned as it is purely consequential and at any rate reading of the order would disclose that there are reasons. The plea of bias as contended is merely an afterthought and raised belatedly and, at any rate, unsupported by material. It is further contended that the doctrine of necessity will apply as the power is conferred on the petitioner by Statute and it is the Director and the Director alone, who can exercise powers under sub-sections (4) and (5) of Section 50 of the Act. For the aforesaid reasons, it is contended that the order is not liable to be interfered with.

6. From the above contentions of both parties, the following propositions may be carved out which will require to be determined for disposal of the present petition:-

(a) What would be the meaning of the expression "opportunity", considering that the Section does not exclude the principles of audi alteram partem?

(b) Does expression "opportunity" read with the principles of audi alteram partem include the right to cross examine and/or to examine defence witnesses?

(c) Is it a requirement of sub-sections (4) and (5) of Section 50 that the person who is sought to be removed from the post of Sarpanch/Deputy Sarpanch/Member must be given a show cause notice not only against the removal from such post, but also a show cause notice indicating the period for which such persons will be held to be ineligible to contest the post of Sarpanch/Deputy Sarpanch/Member?

(d) Must the order of removal from the post of Sarpanch/Deputy Sarpanch/Member, before passing

an order, disclose reasons both for removal and for making ineligible a person to contest or hold the said post referred to above. On the facts and circumstances in the present case does the order disclose the reasons?

(e) Does the material disclose the respondent No.1 was biased against the petitioner and consequently the order suffers from violation of the principles of natural justice and fair play?

7. At the threshold, it may be mentioned that the Petitioner has not raised or argued that the order of the 1st Respondent is liable to be set aside on the ground that there was no material and/or that the findings given are perverse and/or based on materials which were not available to the Petitioner. The only limited submission made is that the Show Cause Notice itself will disclose that an inspection was carried out. Neither the inspection report nor the memo of inspection was made available to the petitioner. At the outset, it may be pointed out that the Show Cause Notice merely proceeded on the footing that the inspection was conducted and in the course of the inspection, serious irregularities/illegalities were observed.

Those have been made known and given to the Petitioner. Therefore, it is clear that the material on which the Respondent No.1 sought to rely upon was made available. There is no inspection report and neither has it been used and/or relied upon. In the light of that, the contention must be rejected.

The contentions set out in paragraph six will now be dealt with not necessarily in the order they are set out but also clubbing them wherever they can be so clubbed.

8. With that, we come to the contention based on the plea of bias. Has there been an infraction of the principle **Nemo debet esse Judex in propria Causa** -'No man shall be Judge in his cause'-. Certain aspects must be borne in mind while considering the plea. On receipt of the Show Cause Notice, the Petitioner filed his reply. In the reply, no objection was raised that the Respondent No.1 was biased against the Petitioner and/or was otherwise disqualified on the ground of bias in proceeding with the Show Cause Notice. At least such an objection was not raised in the reply. Thereafter the matter proceeded before the 1st Respondent. For the first time, the objection

came to be filed after the application for adjournment for further time was rejected and the matter was adjourned for orders with a direction to the petitioner to file written arguments. Even from the application considering the averments set out therein, it is impossible to arrive at a conclusion that based on the said pleadings it is possible to accept the plea of bias. The plea of bias basically is based on the ground that materials gathered at the inspection were used to issue the show cause notice. The Section itself confers power on the Director of removal. This power can be exercised by the Director on complaint made or exercising his statutory duties by examining the records of the Panchayat that the Sarpanch or Deputy Sarpanch is not persistently remiss in the discharge of duties, etc. The Director is the watchdog on these matters. It is his duty to see that the Sarpanch/Deputy Sarpanch acts according to law. This would require inspection to be conducted. If such power is exercised it cannot lead to the conclusion of likelihood of bias. At any rate, that application was rejected after hearing the petitioner. The Petitioner chose not to challenge the said order nor, for that matter, did the Petitioner chose to

participate under protest. The contention sought to be advanced is that there was hardly any time and in these circumstances that should not be held against the Petitioner. It is now a settled proposition of law that bias can be waived. See **Dr. A. Sarana Vs. Lucknow University**, A.I.R. 1976 S.C.2428 In the instant case, the Petitioner did not initially plead bias. In other words, it was not a case of initial bias. The objection was raised later on. In other words, it could only be on account of acts committed during the course of the proceedings. There is no material to show that the conduct of the Respondent No.1 was biased. It often happens that a party dissatisfied with orders merely with a view to prolong the proceedings raise a plea of bias to prevent a quasi judicial or judicial authority from passing orders. The Authorities whether judicial, or quasi judicial, ordinarily should not succumb to such pressure tactics unless the the Authority was required to disclose some material which possibility could lead to a plea of likelihood of bias and for some reason or lapse could not disclose it or has a personal interest or proprietary interest or business interest or institutional interest in which event it is a normal rule that the Authority, judicial or

quasi-judicial, should reclude itself. In the instant case, there is no material which warranted the Respondent No.1 from reclusing himself. There is no difficulty in holding that the plea of bias could be raised against the Respondent No.1 even if he is discharging official duties and a writ of certiorari would be issued if a case is made out of real likelihood of bias.

More importantly, the decision-making process has been conferred on Respondent No.1 as a statutory authority by the Panchayat Raj Act. The legislature has conferred the power on the Director of Panchayats and not on any other person. That power also cannot be delegated. In other words, the doctrine of necessity would apply and the matter has to be heard and Show Cause Notice can be issued by the Respondent No.1 and the Respondent No.1 alone. The mere fact that the Director under the Act has to be appointed by the Government can be no answer. It is impossible to hold that merely because a plea of bias is taken the Government should go on changing the Director under the Act. To my mind, considering all these facts, no case has been made out insofar as the plea of bias is concerned and consequently, that contention is

liable to be rejected.

9. We may now deal with the propositions to the next set of contentions, namely, as to the scope of the expression 'opportunity' contemplated by sub-sections (4) and (5) and whether that would include the right to cross examine complaint if any and produce oral evidence on defence. The expression therein used is "an opportunity". Insofar as sub-section (5) is concerned, it is merely consequential on the Respondent No.1 coming to the conclusion that the Sarpanch has been persistently remiss in the discharge of his duties or misconducted himself or has misused or abused the powers etc. Under sub-section (5) there is a discretion in Respondent No.1, if he holds that a person was unfit to hold the Office as Sarpanch to also remove him as a Member. Therefore, the opportunity contemplated must be given, irrespective of whether the Respondent No.1 acts in an administrative capacity or quasi judicial capacity. The opportunity must conform to the principles of natural justice. That an authority whose orders are liable to result in civil consequences, whether acting in an administrative capacity or quasi-judicial capacity, is bound to

comply with the principles of natural justice is no longer *res integra*, having been settled once and for all by the judgment of the Apex Court in the case of **Smt. Maneka Gandhi v. Union of India & another (AIR 1978 SC 597)**. The Apex Court noted that the aim of both an administrative enquiry as well as quasi-judicial enquiry is to arrive at just decision and if rule of natural justice is calculated to secure justice or put it negatively to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both. Posing to itself a question, the Court observed: "Can it be said that the requirement of fair play or action is less in administrative enquiry than in quasi-judicial one ? Sometimes unjust decision in administrative enquiry may have far more serious consequences than a decision in quasi-judicial enquiry and hence the rules of natural justice must play equally in an administrative enquiry which entails civil consequences."

It is, therefore, clear that the principles of natural justice should apply to both administrative and quasi-judicial enquiries. However, what

particular rule of natural justice should apply will depend on facts and circumstances of the case and more importantly the framework of the law under which the enquiry has to be held and the constraints of the Tribunal or Body of persons appointed for that purpose. See **Saresh Koshy Jorge v. the University of Kerala** (AIR 1969 SC 198). The expression "reasonable opportunity" has come up for consideration before the Apex Court and the High Courts, both under Constitutional provisions as also statutory enactments. In the case of Article 311 before the amendment to the Article, it was held that reasonable opportunity would include an opportunity to deny guilt and establish innocence which can only be done if the party is informed of the charges levelled against and the allegations on which the charges are based; an opportunity to defend by cross-examining the witnesses produced against and by examining himself or any other witness in support of his defence; giving an opportunity to make representation as to why the proposed punishment should not be inflicted which can only be done if the competent authority, after the enquiry is over and after applying its mind to the gravity or otherwise of the charges proved against the Government servant tentatively

proposes to inflict one of the punishments and communicates the same to the Government servant. See **Khem Chand v. Union of India and another** -AIR 1958 SC 300. In **Union of India v. Tulsiram Patel** (AIR 1985 SC 1416), the expression "reasonable opportunity" was considered after the amendment of Article 311. The Apex Court referring to the judgment in **Khem Chand's** case (supra) had reproduced the propositions as culled out earlier. The Apex Court then noted that after the amendment, second opportunity of showing cause against the proposed punishment would not arise. The Court however held that the cause herein need not conform to judicial process of Court of law because judicial adjudication of cause involves a number of technicalities, procedures and evidence which is unnecessary or not required for the purpose of fair hearing in a quasi-judicial or administrative enquiry.

In **Managing Director, ECIL. Hyderabad & ors. v. B. Karunakar and others** (1993(4) SCC 727) the Apex Court took the view that even after the amendment in the event the Disciplinary Authority was distinct from the Enquiry Officer, then while considering the expression "reasonable opportunity"

there would be a duty to give to the delinquent employee a copy of the report as part of the principles of natural justice. See also **S.G. Jaisinghani v. Union of India and others** (AIR 1967 SC 1427). In **State of Mysore & others v. Shivabasappa Shivappa Makapur** (AIR 1963 SC 375) the **Apex Court** noted that when domestic tribunals exercise quasi-judicial functions, they are not Courts. That quasi judicial authorities can obtain information/material for the points under enquiry from all sources and through all channels without being fettered by rules or procedure which govern proceedings in the Court. The only obligation cast is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is 'fair opportunity' would depend on the facts and circumstances of each case. In a case where oral evidence is led, then in that event, a party would be entitled to cross-examine the witness or even lead her own evidence.

In State of Kerala v. K.T.Shaduli Grocery Dealer etc. (AIR 1977 SC 1627), the Apex Court was considering a provision of best assessment under

the Kerala Sales Tax law. The Section contemplated an enquiry assessing the dealer to the best of his judgment. The proviso provided that before taking action, the dealer shall be given a reasonable opportunity of being heard and where Return had been submitted to prove the correctness or completeness of such Return. The issue before the Apex Court was whether that reasonable opportunity or opportunity of being heard would include the right to cross-examine witnesses based on statements. The Sales Tax Officer had disbelieved the account of the assessee. That question, however, was not decided as the Apex Court found that as the Return filed was being disbelieved, the petitioner therein would be entitled to cross-examine to prove the correctness or completeness of the Return. The Court also noted that the expression "reasonable opportunity" would mean a fair hearing. Whether this hearing would extend to the right of demanding cross-examination of witnesses or not would naturally depend on the nature of the materials relied upon, the manner in which the party could rebut those materials and the facts and circumstances of each case.

On behalf of the Petitioner, reliance was

placed on a judgment of the Single Judge of the Madhya Pradesh High Court in the case of **Kailash Kumar Dangi v. State of Madhya Pradesh and others** (2000 A I H C 1033). There what was under consideration was the Section pertaining to removal of the Office bearers of the Panchayat. That Section contemplated enquiry by the State Government with a proviso that no removal should be done unless an opportunity was given to show cause. The learned Single Judge therein held that the said Section would have to be considered in the similar manner as the removal of a Government employee under Article 311. The learned Judge noted that the principles of natural justice being applicable, the party should be given an opportunity of adducing relevant evidence on which he relies. The evidence of the opponent should be taken in his presence and should be given an opportunity to cross-examine the witnesses. To my mind, it would be difficult to hold that as a matter-of-course in proceedings under Sub-sections (4) and (5) of Section 50 of Panchayat Raj Act that oral evidence has to be led. As repeatedly pointed out in various judgments, the nature of the reasonable opportunity would depend on the facts of each case. The right to examine witnesses or cross-examine the

complainant again would depend on facts and circumstances and considering the nature of the documents relied upon by the authority seeking to take action for removal of the Sarpanch or the Member. A Division Bench of the Andhra Pradesh High Court in **D. Sathi Reddy v. Commissioner, Panchayat Raj, Hyderabad & others** (AIR 2000 AP 91) was considering the provisions of Section 249 of the Andhra Pradesh Panchayat Raj Act. In that case, the Court noted that the failure to supply a copy of the report of enquiry officials would be fatal. Similarly, if no proper opportunity was given to give explanation. The Court noted that before forming an opinion as to whether a party was guilty, the authority was bound to comply with the principles of natural justice. The Division Bench noted the observation of the Apex Court therein that the rules of natural justice are not empty rules or mere formality. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of particular power by the administrative authority including exercise of judicial or quasi-judicial functions, the Legislature while conferring the said power may

feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. See **S.N. Mukherjee v. Union of India** (AIR 1990 SC 1984. For, what is "reasonable" also see **Rajendra Singh v. State of M.P. and others** (1996) 5 SCC 460 and **Associated Cement Companies Ltd. v. T.C. Shrivastava and others** - AIR 1984 SC 1227.

From the above discussion and considering the language of sub-section (4) of Section 50 of the Panchayat Raj Act, it is clear that the expression "opportunity" therein would mean "reasonable opportunity" in tune with the principles of natural justice and depending on the facts and circumstances of the case and the nature of the material being considered by the authority in the Show Cause Notice. In the instant case, in the show cause notice, all that was being considered was the documentary evidence on record and the provisions of the Act, Rules, Instructions, etc. In these circumstances, the question of requiring the complainant to be made available for cross-examination would not have arisen. The

Authority only re-acted after the complaint, but the Show Cause Notice was based on inspection of the documents of the Panchayat. All documents and instances on which the Respondent No.1 sought to rely upon or had considered while coming to the prima facie conclusion, were made known to the Petitioner. The Petitioner was then the Sarpanch of Respondent No.4. In these Circumstances, the question of permitting cross-examination of the complainant would not arise. Similarly, on the facts of this present case, the issue of permitting oral evidence to be led by the Petitioner herein also did not arise. That is not to say that leading oral evidence or cross-examining witnesses in defence is totally excluded. That would depend upon the facts of the case and the material considered while forming prima facie opinion and relied upon when the notice to show cause is issued. To our mind, therefore, the rejection by the 1st Respondent of the Petitioner's application for cross-examination of the Respondent/complainant and for permission to lead oral evidence was rightly rejected. Apart from that, the request was made at a belated stage after the matter was closed for arguments and also placed for orders with the direction to file written arguments. That

contention must, therefore, be rejected.

10. We then come to the propositions (3) and (4) as framed, namely, whether the 1st Respondent was duty bound to give notice to the Petitioner that he would be removed as Sarpanch as also Member and be barred from or made ineligible from contesting in the elections held for the post of Sarpanch or Member for a period of five years from the date on which the order was to be made and, secondly, whether the 1st Respondent was duty bound to give reasons whilst exercising the power to bar the Petitioner from holding office for a period of five years as also from holding office as a Member for five years. A plain reading of sub-section (4) of Section 50 shows that as a part of the opportunity, the Respondent No.1 was duty bound to issue a show cause notice before removing a person as a Sarpanch or Deputy Sarpanch, so also while removing a person as a member. The Section further stipulates that once removed, the Sarpanch or Deputy Sarpanch shall also not be eligible for re-election for such period not exceeding five years as the Director may specify in his Order. In other words, unlike the provisions in Madhya Pradesh Panchayat Raj Act, which were considered by

the learned Single Judge of that Court in the case of Kailesh Kumar (supra), the period of disqualification though statutorily fixed, there is discretion conferred on the 1st Respondent in the matter of the period. That discretion is whether it should be for a month or more or for the maximum period of five years. Once there is a discretion, it is clear that the order must disclose reasons more so as the authority before whom the order is challenged, must be able from the order to find out that the 1st Respondent had taken into consideration relevant factors and not irrelevant factors. That material on record had been considered and which material had been made available to the party. In other words, an objective satisfaction based on material available. At least, therefore, the duty to give reasons is implicit both in sub-sections (4) and (5) and about that there can be no dispute considering the evolution of law on that count. The only question is whether the show cause notice must indicate the period which the respondent may prefer to bar a member holding the office of Sarpanch or Deputy Sarpanch or as a member and the stage when this notice should be given ? Should the notice be after coming to the conclusion, that the party is

guilty or can it be simultaneous with the issuance of the show cause notice ? On a plain reading of sub-sections (4) and (5) and the nature of the hearing, to my mind, it is clear that it has to be simultaneous. It is also further clear that notice should be made known the period for which the notice is sought to be removed, as the nature of the enquiry, and the time frame and consideration of material would depend on those facts. A Court while considering the reasons and the fact of reasonable opportunity in case the Authority proposes a shorter ineligibility may consider the principles of natural justice differently than where the maximum period is to be imposed as principles of natural justice cannot be put in a strait jacket. To my mind, therefore, the reasonable opportunity to be given must also include notice to the party to whom the show cause notice is issued that such party is to be disqualified or made ineligible upto the period set out in the show cause notice. That is required to be set out and contained in the show cause notice itself. In the instant case, no such opportunity was given. The Petitioner had filed his reply to the Show Cause Notice, but however, did not complain that because of the failure of the 1st

Respondent in not disclosing the term for which the petitioner was to be disqualified, was hampered in his defence. Therefore, even though there was failure on the part of the 1st Respondent to comply with the requirement of giving opportunity in the matter of ineligibility and the period on the facts of the present case, as no prejudice has been occasioned to the Petitioner, we do not propose to interfere insofar as the failure on that count is concerned.

11. We have however the second aspect, namely whether reasons are required or the order must disclose reasons for removing the Petitioner as Sarpanch for a period of five years and also as a Member for a period of five years. Before considering that, let us consider the need or necessity for reasons. The recording of reasons and the need to give reasons serves a twofold purpose. Firstly, a party aggrieved knows the basis or the reasons on which the order has been passed and has an opportunity while challenging the order, to demonstrate that the reasons which persuaded the authority to pass adverse order were erroneous, irrational or irrelevant and, secondly, the disclosure of reasons and conveying them to a

party operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers. In **Administrative Law, Seventh Edition, by H.W.R. Wade & C.F. Forsyth**, the learned authors relying on various judgments of the English Courts have culled out various principles. The following may be quoted:-

"Sir John Donaldson has said that 'in the absence of reasons it is impossible to determine whether or not there has been an error of law. Failure to give reasons therefore amounts to a denial of justice and is itself an error of law.' Lord Lane CJ. while not wishing to go so far, has held that a statement of reasons must show that the tribunal has considered the point at issue between the parties and must indicate the evidence for its conclusion. Where there is a conflict of evidence, the tribunal ought to state its findings."

As explained earlier, the duty to state reasons is normally held to be mandatory, so that a decision not supported by adequate reasons will be quashed or remitted to the deciding authority.

We may now examine the judgments of the Apex Court and High Courts on that particular aspect. In **Shri Pragdas Umar Vaishya v. Union of India and others** (1967 Mah. L.J. 981), the Apex Court noted that an administrative order of quasi-judicial authority which has civil consequences, must disclose the reasons for its decision. If the reasons are not given, the order is liable to be quashed and it is not the duty of a higher Court to give reasons which the authority is bound to give.

In **M/s Travancore Rayon Ltd. v. Union of India** (1969(3) SCC 868), the Apex Court noted therein that it would be impossible for the Apex Court, exercising jurisdiction under Article 136, to decide the dispute without a speaking order of the authority setting out the nature of the dispute, the arguments in support thereof raised by the aggrieved party and reasonably disclosing that the matter received due consideration by the authority competent to decide the dispute.

In **The Siemens Engineering & Manufacturing Co. of India Ltd. v. The Union of India and another** [(1976)2 SCC 981], the Apex Court once again observed that " where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons." "The rule requiring reasons to be given in support of an order is, like the principle of **audi alteram partem**, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

In **S.N. Mukherjee v. Union of India** (supra) the Constitution Bench of the Apex Court noted that except in those cases where the requirement to give reasons has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions, is required to record the reasons for its decision. The Court observed that in view of the expanding horizon of the principles of natural justice, the requirement to record reasons can be regarded as

one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. The requirement, therefore to record reasons should govern the decision of administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. The reasons need not be elaborate as in the decision of a Court of law. The extent and nature of reasons would depend on particular facts and circumstances. However, what is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is

greater in a case where the order is passed at the initial stage.

In **T.R. Thandur v. Union of India and others** [(1996) 3 SCC 690], the Apex Court observed that in the absence of express statutory provisions, the requirement of recording reasons in writing is implicit as every State action must satisfy the rule of non-arbitrariness.

A Full Bench of Gujarat High Court in **Testeels Ltd. v. N.M. Desai Conciliation Officer and another** (AIR 1970 Guj. 1) examined the issue of the need of the principle to give reasons. The Full Bench noted that there are two reasons where every quasi-judicial order must be a speaking order as the necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set-up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms

to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision-making process; the second reason being the need, considering the power of judicial review possessed by the High Court and the Apex Court. This power of review can be effectively exercised only if the orders are speaking orders. In the absence of any reasons in support of the order, the Courts cannot examine the correctness of the order under review. The superior Courts would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress would be available to the citizens. There would be insidious encouragement to arbitrariness and caprice. If the requirement of giving reasons is insisted upon, then they would be subject to judicial scrutiny and correction.

It is, therefore, clear that the duty to give reasons amongst others is to enable the superior

Court or the reviewing Court to find out whether the authority exercising the powers has exercised them reasonably and considered the predicates which have to be applied while imposing the punishment or the penalty or the like. Both, under Sub-section (4) and Sub-section (5) the duty to give reasons is implicit as the power is discretionary. When discretion is conferred in a system governed by rule of law that must be exercised within clearly defined limits. The rule of law from this point of view means that the decision should be made by application of known principles of law and rules and in general such decision should be predictable and the citizen should know where he is. If a decision is taken without a principle or without any rule, it is unpredictable and such a decision is antithesis of a decision taken in accordance with the rule of law. See **S.G. Jaisinghani v. Union of India** and others- AIR 1967 SC 1427.

It is no doubt true that on behalf of the Respondents reliance was placed on the judgment of the Apex Court in **State of Orissa and another v. Alekh Chandra Jena** ([1988(Supp) SCC 469]. That was a case under the Orissa Gram Panchayat Act. There considering the language of the Section it was held

that once the Collector in his report to the State Government expresses satisfaction that the conditions prescribed in Sub-section (1) of the Orissa Grama Panchayat Act, 1964 existed, the State Government in its Order under Sub-section (2) need not reiterate that further continuation of the Sarpanch in the office would be detrimental to the interest of the Grama Panchayat or the inhabitants of the Grama. A look at that Section indicates that it is the report wherein the opinion has been formed. On that report, the State Government, after giving a reasonable opportunity of showing cause, could remove the Sarpanch and such removal was for a period not exceeding four years as the State Government had specified. In that case, the Apex Court held that accepting the report would mean that the State Government accepted that circumstances existed for exercise of power under Sub-section (2). It is in that context that the said observations were made. It is no authority for the proposition that reasons for imposing the punishment or ineligibility need not be given.

12. In the instant case, we do not propose to interfere with the findings recorded by the 1st Respondent insofar as the Petitioner's conduct as

Sarpanch is concerned. Insofar as holding the post of Sarpanch, a perusal of the order would indicate that there are no reasons to show as to why the Petitioner was made ineligible for a period of five years which is the maximum period. However, considering the nature of the charges, the finding by the 1st Respondent and that all these charges were in the course of functioning as Sarpanch, to our mind, would justify the order of the 1st Respondent, making ineligible to the petitioner hold the post of Sarpanch for a period of five years. Ordinarily, the matter ought to have been sent on remand for reconsideration. We do not propose to do that as, in our opinion, the findings in the matter of misuse of power etc. would justify the order prohibiting the Petitioner from holding the post of Sarpanch for five years.

13. We then come to the issue insofar as the order whereby the Petitioner is also made ineligible to hold the post of Member for a period of five years from the date of the Order. The various acts in respect of which the Petitioner was charged and show cause notice was issued, were in respect of acts committed as a Sarpanch. The duties and powers of a Sarpanch under the Act are

distinct and different from that of a Member. It is no doubt true that under Sub-section (5) if a Sarpanch is removed from his Office under Sub-section (4), he may also be removed from membership. In other words, it is again a discretionary order. Once it is discretionary again the same principles as aforesaid must apply. On behalf of Respondent No.1, their learned Counsel tried to point out, that though the Order may not be happily worded, and considering that the Respondent No.1 is not a Judicial Officer, nonetheless on a reading of the order from paragraph 105 onwards it would indicate the reasons for which the Petitioner was made ineligible to be a Member. On a perusal of those reasons, we find no discussion insofar as the period is concerned. The entire observations therein are in respect of the findings that the Petitioner was guilty of abuse of power etc. Clearly, therefore, there would be an infraction of principles of natural justice inasmuch as no reasons have been given. There are two requirements: (1) Removal as a Member. Considering the reasons given in the order we see no reason as to why that part of the Order removing the Petitioner as a Member should be interfered with. The reasons given by the

Respondent No.1 are that considering the charges relating to the tenure which were proved, the Respondent No.1 was satisfied that the continuation of the Petitioner was detrimental to the interest of the Panchayat. We have no reasons to differ from that point of view as it can be said that that could be a reason for exercise of power under Sub-section (5). That part of the Order, therefore, must be upheld.

Insofar as the second part is concerned, namely, the period of ineligibility again there are no reasons as to why the Respondent No.1 had chosen to make the Petitioner ineligible to hold the post of Member for five years. Ordinarily again, the matter ought to have been remanded back to Respondent No.1. The Order itself was made on 14th June 1999 and at the admission stage this Court, prima facie, on January 14, 2000 was pleased to stay the removal as Member with certain conditions petition is pending for two years. Instead of remanding the matter, we propose on the facts and circumstances to reduce the period of ineligibility for contesting elections to the post of member upto 14th December, 2001.

14. For the aforestated reasons, the following Order:-

(1) We find no reason to interfere with the findings recorded by the Respondent NO.1 as to removal of the Petitioner from both the posts of Sarpanch and Member;

(2) Considering the material on record, we find no reasons to interfere with the Order passed by the Respondent No.1 in barring the Petitioner from holding the post of Sarpanch for a period of five years from the date of the Order i.e. 14th June, 1999;

(3) Insofar as the Order barring the Petitioner from being ineligible for re-election as a Member for a period of five years from the date of Order, we reduce it to a period upto 14th December, 2001;

Rule accordingly made partly absolute in terms of paragraph 14(3). In the circumstances of the case, there shall

be no order as to costs.

Personal Assistant to issue an ordinary copy of this Order. All authorities to act on the said copy.

(F.I. REBELLO)
JUDGE.

(A.S. AGUIAR)
JUDGE.

ac.